



M/s Lypsa Diamonds
ITA Nos.4434-36/Mum/2018
Assessment Years :2011-12 to 2013-14

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ ITA No. 4434/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2011-12)

&

आयकर अपील सं./ ITA No. 4435/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

&

आयकर अपील सं./ ITA No. 4436/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

Lypsa Diamonds 2 nd Floor, Mehta Mahal North Side, 15 th Mathew Road Charni Road, Mumbai – 400 004	बनाम/ Vs.	Income Tax Officer – Wared 30(2)(1) C-13, 6 th Floor, Pratyakshkar Bhawan Bandra Kurla Complex, Bandra (East) Mumbai – 400 051
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAAFI-0410-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Suchek Anchaliya, Ld. AR
Revenue by	:	Shri Michael Jerald-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	15/10/2020
घोषणा की तारीख / Date of Pronouncement	:	22/10/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeals are recalled matter since the appeals were earlier disposed-off vide order dated 27/03/2019. However, the order has



M/s Lypsa Diamonds
 ITA Nos.4434-36/Mum/2018
 Assessment Years :2011-12 to 2013-14

subsequently been recalled, upon assessee's misc. application MA Nos. 413-415/Mum/2019 order dated 09/12/2019. Accordingly, the appeals have come up for fresh hearing before this bench. Facts as well as issues are stated to be pari-materia the same in all the three years and adjudication in any one year shall equally apply to the other year also. The order under challenge is common order for all the three years.

1.2 In the above background, the appeal for AY 2011-12 contest the order of Ld. Commissioner of Income Tax (Appeals)-41, Mumbai [CIT(A)], Appeals Nos. CIT(A)-41/IT-130-132/16-17 dated 12/04/2018 on following grounds: -

1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the initiation of the reassessment proceeding under section 147.
2. On the facts and circumstances of the case and in law the Ld.CIT(A) failed to consider that reassessment proceedings cannot be initiated.
 - a. No reassessment can be made just to make an enquiry or verification.
 - b. Reassessment proceedings cannot be initiate merely on the information received from investigation wing.
 - c. Reassessment proceeding cannot be initiated when the Ld. CIT(A) have reason to suspect and not reason to believe.
3. On the Facts and circumstances of case and law the Ld CIT(A) erred in confirming the assessment order under section 143 sub section 3 r w s 147 of income tax Act which is passed against the principal of natural justice.
4. The Ld. CIT(A) erred in confirming and rejecting the books of accounts under section 145 of the Income Tax Act.
5. The Ld. CIT(A) erred in confirming and treating Rs.42,05,650/- being 12.5 percent of the total purchases of Rs.3,36,45,197/- as bogus non-genuine expenditure and thereby erred in adding the same to the total income of the assessee in view of Section 69C of the Income Tax Act, 1961.
6. The Ld. CIT(A) erred in confirming the disallowance of unsecured loans taken of Rs.1,50,00,000/- and thereby erred in confirming and treating the same as unexplained cash credits in view of Section 68 of the Income Tax Act, 1961.
7. The Ld. CIT(A) erred in confirming the disallowance of unsecured loans taken of Rs.20,958/- and thereby erred in confirming and treating the same as unexplained cash credits in view of Section 68 of the Income Tax Act, 1961.
8. The Ld. CIT(A) erred in confirming the disallowance of genuine commission/ brokerage of Rs.3,50,000/- and thereby erred in treating the same as unexplained expenditure and added the same in view of Section 69C of the Income Tax Act, 1961.



M/s Lypsa Diamonds
ITA Nos.4434-36/Mum/2018
Assessment Years :2011-12 to 2013-14

9. The Ld. CIT(A) erred in confirming the disallowance of the expenses of Rs.2,24,398/- attributed for exempt income as per Section 14A r.w.r 8D of the Income Tax, 1961.
10. The Ld. CIT(A) erred in confirming & charging of interest under Section 234A, 234B, 234C and 234D of the Income Tax Act 1961.
11. The Ld. CIT(A) erred in confirming the initiation of the penalty proceeding under Section 274 rws 271(l)(c) of the Income Tax Act, 1961

As evident, the assessee is aggrieved by certain additions / disallowances as made by Ld. AO while framing the assessment which has subsequently been confirmed by Ld. first appellate authority.

1.3 The Ld. Authorized Representative for Assessee, Shri Suchek Anchaliya, advanced arguments in support of various grounds of appeal. Our attention has been drawn to the documents as placed in the paper-book. Reliance has been placed on certain judicial decisions, the copies of which has been placed before us. The Ld. Departmental Representative (DR), Shri Michael Jerald, on the other hand, drawing attention to the finding of lower authorities, pleaded for dismissal of appeal.

1.4 We have carefully considered the rival submissions, perused relevant material on record and deliberated on various judicial pronouncements as cited before us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

2.1 The material facts are that the assessee being resident firm was subjected to reassessment proceedings for year under consideration and an assessment was framed u/s 143(3) r.w.s. 147 on 30/03/2016 wherein the income was assessed at Rs.257.65 Lacs after certain additions / disallowances as against returned income of Rs.59.64 Lacs filed by the assessee on 28/09/2011 which was offered in reassessment



proceedings also. The original return of income was processed u/s 143(1). The assessee is stated to be engaged as manufacturer, importer, and exporter of rough and cut & polished diamonds.

2.2 The reassessment proceedings were triggered pursuant to receipt of certain information from DGIT (Investigation), Mumbai that a search & seizure action was carried out in the case of Bhanwarlal Jain Group on 03/10/2013 wherein it was unearthed that the said group was operating and managing 70 benami concerns to provide accommodation entries for bogus purchases / unsecured loans to various beneficiaries. It was found out that the assessee was one of such beneficiaries and therefore, the case was reopened as per due process of law by issuance of notice u/s 148 on 10/02/2015. The statutory notices u/s 143(2) & 142(1) were issued in due course of time wherein the assessee was directed to substantiate the purchase / loan transactions carried out with the aforesaid suspicious entities. The assessee has made purchases of Rs.248.75 Lacs & Rs.87.69 Lacs from M/s Daksh Diamonds & M/s Money Diam respectively whereas it received unsecured loans of Rs.50 Lacs each from three entities viz. M/s Amit Diamonds, M/s Jewel Diamonds & M/s Money Diam. All the aforesaid entities were stated to be part of the Bhanwarlal Jain Group.

2.3 In the background of various facts as well as documentary evidences as unearthed during the course of search action, Ld. AO show-caused the assessee and proceeded to disallow the purchases as well as treat the amount of unsecured loans as unexplained cash credit u/s 68 of the Act.



M/s Lypsa Diamonds
ITA Nos.4434-36/Mum/2018
Assessment Years :2011-12 to 2013-14

2.4 In defence of purchase transactions, the assessee correlated the purchase of rough diamonds with the sale of cut & polished diamonds. The various stock registers as maintained by the assessee were produced. It was submitted that the assessee purchased polished diamond from M/s Daksh Diamonds and exported the same after earning Gross profit Rate of 7.2% on such sales. The assessee controverted the statements made during search proceedings on the said group by submitting that the statements were general, self-contradictory and a unilateral act. As against this, to support the purchase transactions, the assessee filed documentary evidences in the shape of ledger extracts, account confirmation copy, Income Tax Return as well audited financial statements of M/s Daksh Diamond. The bank statements evidencing payment to the suppliers through banking channels was also produced. The attention was drawn to the fact the confirmation was given on 01/08/2015 i.e. much after the date of recording of the statements and hence, the same would amount to retraction of the statement. Reliance was placed on the decision of Hon'ble Supreme Court in the case of **Kishanchand Chellaram V/s CIT 125 ITR 713** for the submission that the assessee should have been confronted with the evidences being relied upon by the department.

Similar documentary evidences were submitted with respect to purchase as well as unsecured loan transactions carried out with M/s Money Diam. The assessee submitted that since it had duly discharged the onus of proving the purchase transactions as well as unsecured loans carried out with all the aforesaid parties by submitting their respective confirmation,



M/s Lypsa Diamonds
ITA Nos.4434-36/Mum/2018
Assessment Years :2011-12 to 2013-14

bank statements, audited financial statements and Income Tax Return Acknowledgements etc., the additions could not be made.

2.5 However, the aforesaid submissions as well as documentary evidences submitted by the assessee could not convince Ld. AO who primarily relied upon various facts unearthed during search / survey proceedings. It was noted that not even a single piece of diamond was found at the premises of various entities despite having high turnover and there was no actual delivery of goods. However, since, no sale could take place without making purchase therefore, it would be fair to conclude that the said purchase-sale transactions recorded in the books would not reflect true picture of profits earned by the assessee on these transactions and purchase rate as mentioned in the supplier's sale invoices could not be accepted. Finally, Ld. AO estimated an addition of 12.5% against suspicious purchases which worked out to be Rs.42.05 Lacs and added the same to the income of the assessee.

Regarding unsecured loans, it was concluded that the assessee did not enter into genuine loans transactions. These amounts were not utilised by the assessee in making out-of-books cash purchases but the same were brought back in the books in the form of unsecured loans which would establish that the assessee's own money was introduced in the form of unsecured loans. Therefore, the same was to be added to the income of the assessee as unexplained cash credit u/s 68. Consequently, interest of Rs.20,958/- paid against unsecured loans was also disallowed. The Ld. AO further concluded that the assessee might have incurred certain commission / brokerage for obtaining the



accommodation entries which was estimated at Rs.3.50 Lacs and added to the income of the assessee as unexplained expenditure u/s 69C.

2.6 Since the assessee had earned exempt dividend income, Ld. AO proceeded to compute disallowance u/s 14A. Though the assessee submitted that it has sufficient own funds in the shape of partners' capital and interest free loans to make the investment, however, disregarding the same, Ld. AO worked out aggregate disallowance of Rs.2.24 Lacs in terms of Rule 8D(2) which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.1.98 Lacs and indirect expense disallowance u/r 8D(2)(iii) for Rs.0.26 Lacs.

3. Although the assessee preferred further appeal before Ld.CIT(A) and assailed the various additions / disallowances by way of elaborate written submissions, the same could not find favor with Ld.CIT(A) who upheld the action of Ld. AO in making various additions / disallowances. Aggrieved, the assessee is in further appeal before us. After careful consideration of lower authorities, documentary evidences and various judicial pronouncements, our adjudication to the various issues would be as given in succeeding paragraphs

Validity of reassessment proceedings & Rejection of Books

4. Upon perusal of reasons recorded to initiate reassessment proceedings as placed in the paper-book, it is evident that the reassessment proceedings have been triggered pursuant to receipt of certain information from DGIT (investigation), Mumbai that the assessee obtained bogus loans from certain entities managed and controlled by Shri Bhanwarlal Jain Group. In various statements recorded during the search proceedings, admission was made that the entities did not carry



out any genuine business and merely engaged in providing accommodation entries. Since the assessee was found to be one of the beneficiary, the case was reopened within 4 years from end of relevant assessment year as per due process of law by issuance of statutory notices u/s 148 as well u/s 143(2) & 142(1). The original return filed by the assessee was not subjected to scrutiny assessment. It is quite discernible that Ld. AO was clinched with specific tangible information as to possible escapement of income. Nothing more, in our opinion, was required at this stage to reopen the assessment proceedings. Therefore, we do not find any substance in legal grounds raised before us. Ground Nos. 1 to 3 stand dismissed. Ground No.4 assailing rejection of books would stand dismissed in view of the fact that Ld. AO has made specific item-wise additions without disturbing the overall financial results shown in the audited financial statements. Therefore, Ground Nos. 1 to 4 stands dismissed.

Bogus Purchase

5. It is quite evident that the assessee has correlated the purchases made from suspicious suppliers with the sale transactions. There could be no sale without actual purchase of goods keeping in view the fact that the assessee traded the goods which were stated to be purchased from suspicious dealers. The assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. The assessee's accounts were duly audited wherein various stock register as well as quantitative details of traded goods were furnished. However, it is also uncontroverted fact that not even a single piece of diamond was found at the premises of the suspicious



suppliers which came to light during search / survey proceedings. The said aforesaid facts would justify the stand of Ld. AO in rejecting the profits shown on these purchases and make estimated additions to account for undeclared profit element earned by the assessee on these purchase transactions. Therefore, it was rightly concluded that the said purchase-sale transactions recorded in the books would not reflect true picture of profits earned by the assessee on these transactions and purchase rate as mentioned in the supplier's sale invoices could not be accepted.

So far as the estimation of profit is concerned, we find that the assessee has reflected overall Gross profit (GP) Rate of 6.65% during the year as against corresponding rate of 6.11% in preceding year. The Ld. AR has stated that since the profit earned on these suspicious transactions is 7.25%, no further addition should be made. However, in the background of facts as enumerated by us on this issue, we are not inclined to accept the said plea. Keeping in view the fact that the assessee was dealing in low margin commodity like diamond which attract lower VAT rate of 1% and in view of the overall GP rate reflected during the year, we restrict the estimation to 2% of aggregate purchase of Rs.3,36,45,197/-. The same comes to Rs.6,72,904/-. The impugned additions, thus made by Ld. AO, stand restricted to that extent. Ground No.5 stands partly allowed.

Addition of Unsecured Loans, interest & commission

6. Ground Nos. 6 to 8 assails captioned additions. From the order of Ld. AO, we find that the unsecured loans have been treated as unexplained cash credit primarily relying upon third party statements



M/s Lypsa Diamonds
ITA Nos.4434-36/Mum/2018
Assessment Years :2011-12 to 2013-14

made during the course of search operations. In terms of Section 68, the assessee was under an obligation to prove the identity & creditworthiness of the lender as well as to show the genuineness of the stated transactions. The loans were obtained from 3 entities viz. (i) M/s Amit Diamonds; (ii) M/s Jewel Diam; (iii) M//s Money Diam.

To discharge the onus, the assessee had furnished following documentary evidences during the course of assessment proceedings: -

- (i) Ledger Confirmation of all the three entities
- (ii) Income Tax Return Acknowledgement of all entities for AY 2011-12
- (iii) Audited financial Statements of all the entities
- (iv) Bank statements of assessee as well all the lenders evidencing movement of funds from banking channels
- (v) Funds flow statements of all the three entities
- (vi) Ledger confirmation, bank statement & copy of Income Tax Acknowledgment for AY 2013-14 i.e. the years in which the loan was repaid

We find that the loan has not only been repaid in subsequent years, but the assessee has duly paid interest on these loans and deducted applicable tax at source. The loan has duly been reflected in the audited financial statement of all the lenders. All the three entities were holding valid PAN and assessed to Income Tax. The funds were routed through banking channels which were ultimately repaid in subsequent years. The account confirmation of all the lenders was placed on record. There is no allegation of immediate cash deposit before transfer of funds to the assessee. Nothing was brought on record to suggest any cash got exchanged between the assessee and the lenders. In the background of stated facts, it could very well be said that the assessee had duly discharged the onus of proving the fulfilment of primary ingredients of Sec.68. The onus, thus shifted on revenue, to controvert the same by



M/s Lypsa Diamonds
ITA Nos.4434-36/Mum/2018
Assessment Years :2011-12 to 2013-14

bringing on record cogent material to dislodge the documentary evidences submitted by the assessee. However, except for third party statements, the revenue is not cinched with any specific evidence against the assessee to declare the said loans as the money of the assessee brought into the books by way of unexplained cash credit. No effective investigation is shown to have been carried out by the revenue to dislodge the assessee's documentary evidences.

Therefore, on the facts & circumstances, the addition of unexplained cash credit could not be sustained in the eyes of law. Consequently, interest disallowance as well as commission / brokerage addition as made against the same would not survive. We order so. These grounds stand allowed.

Disallowance u/s 14A

7. Upon perusal of computation of income, it transpires that the assessee has earned exempt dividend income of Rs.40,972/- during the year. Upon perusal of material on record, we find that the assessee has opening investment in shares as Rs.41.25 Lacs whereas the closing value is Rs.62.93 Lacs i.e. there is an increment of Rs.21.68 Lacs during the year. However, the opening share investment which have fetched dividend is Rs.5.38 Lacs and the closing value of such investment is Rs.6.11 Lacs. The average of two works out to be Rs.5.74 Lacs. In our opinion, while computing the said disallowance, only those investments which have fetched exempt income during the year are to be considered. Further, the overall disallowance could not exceed the exempt income earned by the assessee during the year. Therefore, we direct Ld. AO to re-compute the said disallowance considering only those investments



which have fetched exempt income during the year. Ground No.9 stands partly allowed. Rest of the ground are either premature or the same would not require any specific adjudication on our part.

8. Resultantly, the assessee's appeal stands partly allowed in terms of our above order.

ITA No.4435/Mum/2018, AY 2012-13

9. The assessee has similarly been assessed u/s 143(3) r.w.s. 147 on 30/03/2016 wherein it has been saddled with estimated additions @12.5% on account of *alleged bogus purchases*. The same has resulted into an addition of Rs.33.93 Lacs. The interest of Rs.13.50 Lacs paid against unsecured loans to the suspicious lenders has also been disallowed. The commission income has been estimated @Rs.2 Lacs. The disallowance u/s 14A has been worked out at Rs.2.56 Lacs In terms of Rule 8D. The appellate order is on similar lines, against which the assessee is in further appeal before us with similar grounds. Facts being *pari-materia* the same, our observation, conclusion as well as adjudication as in AY 2011-12 shall *mutatis-mutandis* apply to this year also. The legal grounds assailing reassessment proceedings stands dismissed. The additions against *alleged bogus purchases* stand restricted to 2% of 2,71,49,985/- which works out to be Rs.5,43,000/-. The addition of interest as well as commission stand deleted. The Ld. AO is directed to re-work disallowance u/s 14A after considering exempt income yielding investments only. The overall disallowance u/s 14A would not exceed the exempt income earned by the assessee. The appeal stands partly allowed.



ITA No.4436/Mum/2018, AY 2013-14

10.1 The assessee has similarly been assessed u/s 143(3) on 30/03/2016 wherein it has been saddled with following additions / disallowances: -

- (i) interest disallowance u/s 36(1)(iii) for Rs.5.32 Lacs.
- (ii) Interest disallowance of Rs.12.15 Lacs as paid to against unsecured loans to the suspicious lenders
- (iii) Disallowance u/s 14A for Rs.1.70 Lacs in terms of Rule 8D.

The appellate order is on similar lines, against which the assessee is in further appeal before us with similar grounds. Facts being pari-materia the same with respect to issue no. (ii) & (iii), our observation, conclusion as well as adjudication as in AY 2011-12 shall *mutatis-mutandis* apply to this year also. Resultantly, the interest disallowance of Rs.12.15 Lacs stands deleted. The Ld. AO is directed to re-work disallowance u/s 14A after considering exempt income yielding investments only. The overall disallowance u/s 14A would not exceed the exempt income earned by the assessee.

10.2 The interest disallowance u/s 36(1)(iii) stem from the fact that partners' closing capital account had debit balance of Rs.109.46 Lacs and it had advanced interest free loans of Rs.7 Lacs. However, the assessee was having secured / unsecured loans and it incurred interest expenditure of Rs.68.89 Lacs during the year. The Ld. AO formed an opinion that interest bearing funds were withdrawn from the firm being capital withdrawn by the partners and interest free advances.

10.3 The assessee submitted that the capital balances had credit balances in all the earlier three years. The firm did not provide any



interest on credit balances nor charged any interest on debit balances. The funds were stated to be withdrawn for commercial expediency. However, not convinced Ld. AO, applying rate of 12%, computed interest disallowance of 5.32 Lacs. The stand of Ld. AO, upon confirmation by Ld. CIT(A), is under challenge before us.

10.4 Upon careful consideration, it is quite evident that the firm has not provided any interest on credit balances of partners' capital in earlier years and likewise it has also not charged the interest on debit balances during the year. The partners' had credit balances in all earlier three years whereas debit balances have arisen only due to the withdrawals during the year. The assessee's financial statements for the year, as placed on record, would show that there is overall reduction in secured and unsecured loans during the year whereas sundry creditors for goods and expenses have shown hefty increase which would lead to a conclusion that the withdrawals were funded out of credit float enjoyed by the assessee. Further, the assessee has reflected taxable income of Rs.204.42 Lacs which could be said to have accrued evenly throughout the year. Therefore, unless direct nexus of borrowed funds vis-à-vis capital withdrawals was established, no such disallowance u/s 36(1)(iii) could have been made. We find that Ld. AO has failed to bring on record this nexus. Therefore, not convinced with the stand of lower authorities, we are inclined to delete the said disallowance. We order so. This ground stand allowed.

10.5 The appeal stands partly allowed.



M/s Lypsa Diamonds
ITA Nos.4434-36/Mum/2018
Assessment Years :2011-12 to 2013-14

Conclusion

11. All the three appeals stand partly allowed to the extent indicated in the order.

Order pronounced on 22nd October, 2020.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 22/10/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.